

109TH CONGRESS
2D SESSION

H. R. 4157

[Report No. 109-]

To amend the Social Security Act to encourage the dissemination, security, confidentiality, and usefulness of health information technology.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. DEAL of Georgia, Mr. BLUNT, Mr. CANTOR, Mr. McCRERY, Mr. SAM JOHNSON of Texas, Mr. CAMP, Mr. RAMSTAD, Mr. ENGLISH of Pennsylvania, Mr. HAYWORTH, Mr. HULSHOF, Mr. HERGER, Mr. LEWIS of Kentucky, Mr. WELLER, Mr. RYAN of Wisconsin, Mr. BEAUPREZ, Mr. UPTON, Mrs. WILSON of New Mexico, Mr. BASS, Mr. TERRY, Mr. MURPHY, Mr. BRADLEY of New Hampshire, Mr. BOEHLERT, Mr. CASTLE, Mrs. EMERSON, Mr. GERLACH, Mr. HOBSON, Mrs. KELLY, Mr. JINDAL, Mr. SCHWARZ of Michigan, Mr. SHAYS, and Mr. SIMMONS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE --, 2006

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on October 27, 2005]

A BILL

To amend the Social Security Act to encourage the dissemination, security, confidentiality, and usefulness of health information technology.



1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Health Information Technology Promotion Act of 2006”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
7 *Act is as follows:*

Sec. 1. Short title and table of contents.

Sec. 2. Office of the National Coordinator for Health Information Technology.

Sec. 3. Safe harbors for provision of health information technology and services
to health care professionals.

Sec. 4. Commonality and variation in health information laws and regulations.

Sec. 5. Implementing modern coding system; application under part A of the
Medicare program.

Sec. 6. Procedures to ensure timely updating of standards that enable electronic
exchanges.

Sec. 7. Report on the American Health Information Community.

Sec. 8. Strategic plan for coordinating implementation of health information
technology.

Sec. 9. Promotion of telehealth services.

8 **SEC. 2. OFFICE OF THE NATIONAL COORDINATOR FOR**
9 **HEALTH INFORMATION TECHNOLOGY.**

10 (a) *IN GENERAL.*—*Title II of the Public Health Serv-*
11 *ice Act is amended by adding at the end the following new*
12 *part:*

13 **“PART D—HEALTH INFORMATION TECHNOLOGY**
14 **“SEC. 271. OFFICE OF THE NATIONAL COORDINATOR FOR**
15 **HEALTH INFORMATION TECHNOLOGY.**

16 “(a) *ESTABLISHMENT.*—*There is established within*
17 *the Department of Health and Human Services an Office*
18 *of the National Coordinator for Health Information Tech-*
19 *nology that shall be headed by the National Coordinator*

1 *for Health Information Technology (referred to in this sec-*
2 *tion as the ‘National Coordinator’). The National Coordi-*
3 *nator shall be appointed by the President and shall report*
4 *directly to the Secretary. The National Coordinator shall*
5 *be paid at a rate equal to the rate of basic pay for level*
6 *IV of the Executive Schedule.*

7 “(b) GOALS OF NATIONWIDE INTEROPERABLE
8 HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—
9 The National Coordinator shall perform the duties under
10 subsection (c) in a manner consistent with the development
11 of a nationwide interoperable health information technology
12 infrastructure that—

13 “(1) improves health care quality, reduces med-
14 ical errors, increases the efficiency of care, and ad-
15 vances the delivery of appropriate, evidence-based
16 health care services;

17 “(2) promotes wellness, disease prevention, and
18 management of chronic illnesses by increasing the
19 availability and transparency of information related
20 to the health care needs of an individual for such in-
21 dividual;

22 “(3) ensures that appropriate information nec-
23 essary to make medical decisions is available in a us-
24 able form at the time and in the location that the
25 medical service involved is provided;

1 “(4) produces greater value for health care ex-
2 penditures by reducing health care costs that result
3 from inefficiency, medical errors, inappropriate care,
4 and incomplete information;

5 “(5) promotes a more effective marketplace,
6 greater competition, greater systems analysis, in-
7 creased choice, enhanced quality, and improved out-
8 comes in health care services;

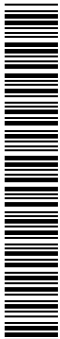
9 “(6) improves the coordination of information
10 and the provision of such services through an effective
11 infrastructure for the secure and authorized exchange
12 and use of health care information; and

13 “(7) ensures that the confidentiality of individ-
14 ually identifiable health information of a patient is
15 secure and protected.

16 “(c) DUTIES OF NATIONAL COORDINATOR.—

17 “(1) STRATEGIC PLANNER FOR INTEROPERABLE
18 HEALTH INFORMATION TECHNOLOGY.—The National
19 Coordinator shall maintain, direct, and oversee the
20 continuous improvement of a strategic plan to guide
21 the nationwide implementation of interoperable health
22 information technology in both the public and private
23 health care sectors consistent with subsection (b).

24 “(2) PRINCIPAL ADVISOR TO HHS.—The Na-
25 tional Coordinator shall serve as the principal advi-



1 *sor of the Secretary on the development, application,*
2 *and use of health information technology, and coordi-*
3 *nate the health information technology programs of*
4 *the Department of Health and Human Services.*

5 *“(3) COORDINATOR OF FEDERAL GOVERNMENT*
6 *ACTIVITIES.—*

7 *“(A) IN GENERAL.—The National Coordi-*
8 *nator shall serve as the coordinator of Federal*
9 *Government activities relating to health informa-*
10 *tion technology.*

11 *“(B) SPECIFIC COORDINATION FUNC-*
12 *TIONS.—In carrying out subparagraph (A), the*
13 *National Coordinator shall provide for—*

14 *“(i) the development and approval of*
15 *standards used in the electronic creation,*
16 *maintenance, or exchange of health infor-*
17 *mation; and*

18 *“(ii) the certification and inspection of*
19 *health information technology products, ex-*
20 *changes, and architectures to ensure that*
21 *such products, exchanges, and architectures*
22 *conform to the applicable standards ap-*
23 *proved under clause (i).*

24 *“(C) USE OF PRIVATE ENTITIES.—The Na-*
25 *tional Coordinator shall, to the maximum extent*



1 *possible, contract with or recognize private enti-*
2 *ties in carrying out subparagraph (B).*

3 “(D) *UNIFORM APPLICATION OF STAND-*
4 *ARDS.—A standard approved under subpara-*
5 *graph (B)(i) for use in the electronic creation,*
6 *maintenance, or exchange of health information*
7 *shall preempt a standard adopted under State*
8 *law, regulation, or rule for such a use.*

9 “(4) *INTRAGOVERNMENTAL COORDINATOR.—The*
10 *National Coordinator shall ensure that health infor-*
11 *mation technology policies and programs of the De-*
12 *partment of Health and Human Services are coordi-*
13 *nated with those of relevant executive branch agencies*
14 *and departments with a goal to avoid duplication of*
15 *effort and to ensure that each agency or department*
16 *conducts programs within the areas of its greatest ex-*
17 *pertise and its mission in order to create a national*
18 *interoperable health information system capable of*
19 *meeting national public health needs effectively and*
20 *efficiently.*

21 “(5) *ADVISOR TO OMB.—The National Coordi-*
22 *nator shall provide to the Director of the Office of*
23 *Management and Budget comments and advice with*
24 *respect to specific Federal health information tech-*
25 *nology programs.*



1 “(d) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
2 *are authorized to be appropriated such sums as may be nec-*
3 *essary to carry out this section for each of fiscal years 2006*
4 *through 2010.”.*

5 (b) *TREATMENT OF EXECUTIVE ORDER 13335.*—*Exec-*
6 *utive Order 13335 shall not have any force or effect after*
7 *the date of the enactment of this Act.*

8 (c) *TRANSITION FROM ONCHIT UNDER EXECUTIVE*
9 *ORDER.*—

10 (1) *IN GENERAL.*—*All functions, personnel, as-*
11 *sets, liabilities, administrative actions, and statutory*
12 *reporting requirements applicable to the old National*
13 *Coordinator or the Office of the old National Coordi-*
14 *nator on the date before the date of the enactment of*
15 *this Act shall be transferred, and applied in the same*
16 *manner and under the same terms and conditions, to*
17 *the new National Coordinator and the Office of the*
18 *new National Coordinator as of the date of the enact-*
19 *ment of this Act.*

20 (2) *ACTING NATIONAL COORDINATOR.*—*Before the*
21 *appointment of the new National Coordinator, the old*
22 *National Coordinator shall act as the National Coordi-*
23 *nator for Health Information Technology until the*
24 *office is filled as provided in section 271(a) of the*
25 *Public Health Service Act, as added by subsection (a).*



1 *The President may appoint the old National Coordi-*
2 *nator as the new National Coordinator.*

3 (3) *DEFINITIONS.—For purposes of this sub-*
4 *section:*

5 (A) *NEW NATIONAL COORDINATOR.—The*
6 *term “new National Coordinator” means the Na-*
7 *tional Coordinator for Health Information Tech-*
8 *nology appointed under section 271(a) of the*
9 *Public Health Service Act, as added by sub-*
10 *section (a).*

11 (B) *OLD NATIONAL COORDINATOR.—The*
12 *term “old National Coordinator” means the Na-*
13 *tional Coordinator for Health Information Tech-*
14 *nology appointed under Executive Order 13335.*

15 **SEC. 3. SAFE HARBORS FOR PROVISION OF HEALTH INFOR-**
16 **MATION TECHNOLOGY AND SERVICES TO**
17 **HEALTH CARE PROFESSIONALS.**

18 (a) *FOR CIVIL PENALTIES.—Section 1128A(b) of the*
19 *Social Security Act (42 U.S.C. 1320a-7a(b)) is amended*
20 *by adding at the end the following new paragraph:*

21 “(4)(A) *For purposes of this subsection, a payment de-*
22 *scribed in paragraph (1) does not include any nonmonetary*
23 *remuneration (in the form of health information technology*
24 *and related services) made on or after the HIT effective date*
25 *(as defined in subparagraph (B)(ii)) by a hospital or crit-*

1 ical access hospital to a physician if the following require-
2 ments are met:

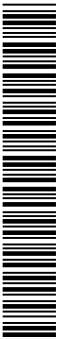
3 “(i) The provision of such remuneration is made
4 without a condition that—

5 “(I) limits or restricts the use of the health
6 information technology to services provided by
7 the physician to individuals receiving services at
8 the location of the hospital or critical access hos-
9 pital providing such technology;

10 “(II) limits or restricts the use of the health
11 information technology in conjunction with other
12 health information technology; or

13 “(III) takes into account the volume or
14 value of referrals (or other business generated) by
15 the physician to the hospital or critical access
16 hospital.

17 “(ii) Such remuneration is arranged for in a
18 written agreement that is signed by a representative
19 of the hospital or critical access hospital and by the
20 physician and that specifies the remuneration made
21 and states that the provision of such remuneration is
22 made for the primary purpose of better coordination
23 of care or improvement of health care quality or effi-
24 ciency.



1 “(B) *For purposes of subparagraph (A) and sections*
2 *1128B(b)(3)(J) and 1877(e)(9)—*

3 “(i) *the term ‘health information technology’*
4 *means hardware, software, license, intellectual prop-*
5 *erty, equipment, or other information technology (in-*
6 *cluding new versions, upgrades, and connectivity) or*
7 *related services used for the electronic creation, main-*
8 *tenance, and exchange of clinical health information;*
9 *and*

10 “(ii) *the term ‘HIT effective date’ means the date*
11 *that is 180 days after the date of the enactment of*
12 *this paragraph.*”.

13 (b) *FOR CRIMINAL PENALTIES.—Section 1128B(b)(3)*
14 *of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended—*

15 (1) *in subparagraph (G), by striking “and” at*
16 *the end;*

17 (2) *in the subparagraph (H) as added by section*
18 *237(d) of the Medicare Prescription Drug, Improve-*
19 *ment, and Modernization Act of 2003 (Public Law*
20 *108–173; 117 Stat. 2213)—*

21 (A) *by moving such subparagraph 2 ems to*
22 *the left; and*

23 (B) *by striking the period at the end and*
24 *inserting a semicolon;*



1 (3) in the subparagraph (H) added by section
2 431(a) of such Act (117 Stat. 2287)—

3 (A) by redesignating such subparagraph as
4 subparagraph (I);

5 (B) by moving such subparagraph 2 ems to
6 the left; and

7 (C) by striking the period at the end and
8 inserting “; and”; and

9 (4) by adding at the end the following new sub-
10 paragraph:

11 “(J) any nonmonetary remuneration (in the
12 form of health information technology, as defined in
13 section 1128A(b)(4)(B)(i), and related services) solic-
14 ited or received by a person on or after the HIT effec-
15 tive date (as defined in section 1128A(b)(4)(B)(ii))
16 (or offered or paid to a person on or after such date)
17 if—

18 “(i) such remuneration is solicited or re-
19 ceived (or offered or paid) without a condition
20 that—

21 “(I) limits or restricts the use of the
22 health information technology to services
23 provided by the person to individuals re-
24 ceiving services at the location of the entity
25 providing such technology;

1 “(II) limits or restricts the use of the
2 health information technology in conjunc-
3 tion with other health information tech-
4 nology; or

5 “(III) takes into account the volume or
6 value of referrals (or other business gen-
7 erated) by the person to the entity providing
8 such technology; and

9 “(ii) such remuneration is arranged for in
10 a written agreement that is signed by a rep-
11 resentative of the entity and by the physician
12 and that specifies the remuneration made and
13 states that the provision of such remuneration is
14 made for the primary purpose of better coordina-
15 tion of care or improvement of health care qual-
16 ity or efficiency.”.

17 (c) *FOR LIMITATION ON CERTAIN PHYSICIAN REFER-*
18 *RALS.—Section 1877(e) of such Act (42 U.S.C. 1395nn(e))*
19 *is amended by adding at the end the following new para-*
20 *graph:*

21 “(9) *INFORMATION TECHNOLOGY AND SERV-*
22 *ICES.—Any nonmonetary remuneration (in the form*
23 *of health information technology, as defined in section*
24 *1128A(b)(4)(B)(i), and related services) made on or*
25 *after the HIT effective date (as defined in section*

1 1128A(b)(4)(B)(ii)) by an entity to a physician if the
2 following requirements are met:

3 “(A) The provision of such remuneration is
4 made without a condition that—

5 “(i) limits or restricts the use of the
6 health information technology to services
7 provided by the physician to individuals re-
8 ceiving services at the location of the entity
9 providing such technology;

10 “(ii) limits or restricts the use of the
11 health information technology in conjunc-
12 tion with other health information tech-
13 nology; or

14 “(iii) takes into account the volume or
15 value of referrals (or other business gen-
16 erated) by the physician to the entity pro-
17 viding such technology.

18 “(B) Such remuneration is arranged for in
19 a written agreement that is signed by a rep-
20 resentative of the entity and by the physician
21 and that specifies the remuneration made and
22 states that the provision of such remuneration is
23 made for the primary purpose of better coordina-
24 tion of care or improvement of health care qual-
25 ity or efficiency.”.

1 (d) *REGULATION, EFFECTIVE DATE, AND EFFECT ON*
2 *STATE LAWS.*—

3 (1) *REGULATIONS.*—Not later than the *HIT* ef-
4 fective date, the Secretary of Health and Human
5 Services shall promulgate such regulations as may be
6 necessary to carry out the provisions of this section.

7 (2) *HIT EFFECTIVE DATE DEFINED.*—For pur-
8 poses of this subsection and subsection (e), the term
9 “*HIT effective date*” has the meaning given such term
10 in section 1128A(b)(4)(B)(ii) of the Social Security
11 Act, as added by subsection (a).

12 (3) *PREEMPTION OF STATE LAWS.*—No State (as
13 defined in section 4(c)(3)) shall have in effect a State
14 law that imposes a criminal or civil penalty for a
15 transaction described in section 1128A(b)(4),
16 1128B(b)(3)(J), or 1877(e)(9) of the Social Security
17 Act, as added by this section, if the conditions de-
18 scribed in the respective section of such Act, with re-
19 spect to such transaction, are met.

20 (e) *STUDY AND REPORT TO ASSESS EFFECT OF SAFE*
21 *HARBORS AND EXCEPTION ON HEALTH SYSTEM.*—

22 (1) *IN GENERAL.*—The Secretary of Health and
23 Human Services shall conduct a study to determine
24 the impact of each of the safe harbors and the excep-



1 *tion described in paragraph (3). In particular, the*
2 *study shall examine the following:*

3 (A) *The effectiveness of each safe harbor and*
4 *exception in increasing the adoption of health*
5 *information technology.*

6 (B) *The types of health information tech-*
7 *nology provided under each safe harbor and ex-*
8 *ception.*

9 (C) *The extent to which the financial or*
10 *other business relationships between providers*
11 *under each safe harbor or exception have changed*
12 *as a result of the safe harbor or exception in a*
13 *way that affects the health care system, affects*
14 *choices available to consumers, or affects health*
15 *care expenditures.*

16 (2) *REPORT.—Not later than three years after*
17 *the HIT effective date, the Secretary of Health and*
18 *Human Services shall submit to Congress a report on*
19 *the study under paragraph (1) and shall include such*
20 *recommendations for changes in the safe harbors and*
21 *exception as the Secretary determines may be appro-*
22 *priate.*

23 (3) *SAFE HARBORS AND EXCEPTION DE-*
24 *SCRIBED.—For purposes of this subsection, the safe*



1 *harbors and exception described in this paragraph*
2 *are—*

3 (A) *the safe harbor under section*
4 *1128A(b)(4) of the Social Security Act (42*
5 *U.S.C. 1320a-7a(b)(4)), as added by subsection*
6 *(a);*

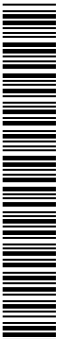
7 (B) *the safe harbor under section*
8 *1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-*
9 *7b(b)(3)(J)), as added by subsection (b); and*

10 (C) *the exception under section 1877(e)(9)*
11 *of such Act (42 U.S.C. 1395nn(e)(9)), as added*
12 *by subsection (c).*

13 **SEC. 4. COMMONALITY AND VARIATION IN HEALTH INFOR-**
14 **MATION LAWS AND REGULATIONS.**

15 (a) *STUDY TO DETERMINE IMPACT OF VARIATION AND*
16 *COMMONALITY IN STATE HEALTH INFORMATION LAWS AND*
17 *REGULATIONS.—*

18 (1) *IN GENERAL.—For purposes of promoting the*
19 *development of a nationwide interoperable health in-*
20 *formation technology infrastructure consistent with*
21 *section 271(b) of the Public Health Service Act (as*
22 *added by section 2(a)), the Secretary of Health and*
23 *Human Services shall conduct a study of the impact*
24 *of variation in State security and confidentiality*
25 *laws and current Federal security and confidentiality*



1 *standards on the timely exchanges of health informa-*
2 *tion in order to ensure the availability of health in-*
3 *formation necessary to make medical decisions at the*
4 *location in which the medical care involved is pro-*
5 *vided. Such study shall examine—*

6 *(A)(i) the degree of variation and com-*
7 *monality among the requirements of such laws*
8 *for States; and*

9 *(ii) the degree of variation and com-*
10 *monality between the requirements of such laws*
11 *and the current Federal standards;*

12 *(B) insofar as there is variation among and*
13 *between such requirements, the strengths and*
14 *weaknesses of such requirements; and*

15 *(C) the extent to which such variation may*
16 *adversely impact the secure, confidential, and*
17 *timely exchange of health information among*
18 *States, the Federal government, and public and*
19 *private entities, or may otherwise impact the re-*
20 *liability of such information.*

21 *(2) REPORT.—Not later than 18 months after the*
22 *date of the enactment of this Act, the Secretary of*
23 *Health and Human Services shall submit to Congress*
24 *a report on the study under paragraph (1) and shall*
25 *include in such report the following:*



1 (A) *ANALYSIS OF NEED FOR GREATER COM-*
2 *MONALITY.—A determination by the Secretary*
3 *on the extent to which there is a need for greater*
4 *commonality of the requirements of State secu-*
5 *rity and confidentiality laws and current Fed-*
6 *eral security and confidentiality standards to*
7 *better protect or strengthen the security and con-*
8 *fidentiality of health information in the timely*
9 *exchange of health information among States, the*
10 *Federal government, and public and private en-*
11 *tities.*

12 (B) *RECOMMENDATIONS FOR GREATER COM-*
13 *MONALITY.—Insofar as the Secretary determines*
14 *under subparagraph (A) that there is a need for*
15 *greater commonality of such requirements, the*
16 *extent to which (and how) the current Federal*
17 *standards should be changed, and the extent to*
18 *which (and how) the State laws should be con-*
19 *formed, in order to provide the commonality*
20 *needed to better protect or strengthen the security*
21 *and confidentiality of health information in the*
22 *timely exchange of health information.*

23 (b) *IMPLEMENTATION OF RECOMMENDATIONS IF CON-*
24 *GRESS FAILS TO ACT.—*



1 (1) *IN GENERAL.*—*If the conditions under para-*
2 *graph (2) are met, the Secretary shall, by regulation,*
3 *modify the current Federal security and confiden-*
4 *tiality standards to the extent that the Secretary de-*
5 *termines it necessary in order to achieve the needed*
6 *degree of commonality to better protect or strengthen*
7 *the security and confidentiality of health information*
8 *in the timely exchange of health information. Such a*
9 *modification shall be based upon the recommenda-*
10 *tions described in subsection (a)(2)(B), and if the Sec-*
11 *retary modifies a current Federal security and con-*
12 *fidentiality standard, the modified standard shall su-*
13 *persede (and the Secretary shall limit the permissi-*
14 *bility of) any State security and confidentiality law*
15 *that relates to (but is different from) such standard.*

16 (2) *CONDITIONS.*—*The conditions under this*
17 *paragraph are the following:*

18 (A) *NEED FOR GREATER COMMONALITY.*—
19 *The Secretary determines under subsection*
20 *(a)(2)(A) that there is a need for greater com-*
21 *monality in the requirements of State security*
22 *and confidentiality laws and current Federal se-*
23 *curity and confidentiality standards to better*
24 *protect or strengthen the security and confiden-*
25 *tiality of health information in the timely ex-*

1 *change of health information among States, the*
2 *Federal government, and public and private en-*
3 *tities.*

4 *(B) CONGRESSIONAL FAILURE TO ACT.—*
5 *The Congress fails to enact, within 18 months*
6 *after the date of receipt of the report under sub-*
7 *section (a)(2), legislation that specifically re-*
8 *sponds to the recommendations described in sub-*
9 *section (a)(2)(B). Such legislation may include*
10 *any action described in paragraph (1) (relating*
11 *to modifying Federal security and confiden-*
12 *tiality standards).*

13 *(3) TREATMENT OF CURRENT LAWS AND STAND-*
14 *ARDS.—*

15 *(A) CONTINUATION OF CURRENT FEDERAL*
16 *STANDARDS AND STATE LAWS PERMITTED.—*
17 *Nothing in this subsection shall be construed as*
18 *preventing the Secretary from continuing to*
19 *apply the current Federal security and confiden-*
20 *tiality standards and from permitting the con-*
21 *tinuance of State security and confidentiality*
22 *laws if such standards are not modified.*

23 *(B) NO PREEMPTION OF STATE LAW UNLESS*
24 *RULE ADOPTED.—A State security and confiden-*
25 *tiality law shall not be preempted under para-*

1 *graph (1), except to the extent the Secretary lim-*
2 *its the application of such law under such para-*
3 *graph. The Secretary's exercise of such authority*
4 *supercedes the provisions of section 1178(a) of*
5 *the Social Security Act (42 U.S.C. 1320d-7(a))*
6 *and section 264(c)(2) of the Health Insurance*
7 *Portability and Accountability Act of 1996 (42*
8 *U.S.C. 1320d-2 note).*

9 *(c) DEFINITIONS.—For purposes of this section:*

10 *(1) CURRENT FEDERAL SECURITY AND CON-*
11 *FIDENTIALITY STANDARDS.—The term “current Fed-*
12 *eral security and confidentiality standards” means*
13 *the Federal privacy standards established pursuant to*
14 *section 264(c) of the Health Insurance Portability*
15 *and Accountability Act of 1996 (42 U.S.C. 1320d-2*
16 *note) and security standards established under section*
17 *1173(d) of the Social Security Act.*

18 *(2) SECRETARY.—The term “Secretary” means*
19 *the Secretary of Health and Human Services.*

20 *(3) STATE.—The term “State” has the meaning*
21 *given such term when used in title XI of the Social*
22 *Security Act, as provided under section 1101(a) of*
23 *such Act (42 U.S.C. 1301(a)).*

24 *(4) STATE SECURITY AND CONFIDENTIALITY*
25 *LAWS.—The term “State security and confidentiality*



1 *laws” means State laws and regulations relating to*
2 *the privacy and confidentiality of health information*
3 *or to the security of such information.*

4 (d) *CONFORMING AMENDMENTS.—*

5 (1) *HIPAA.—Section 264(c)(2) of the Health In-*
6 *surance Portability and Accountability Act of 1996*
7 *(42 U.S.C. 1320d-2 note) is amended by striking “A*
8 *regulation” and inserting “Subject to section 4(b) of*
9 *the Health Information Technology Promotion Act of*
10 *2006, a regulation”.*

11 (2) *TITLE XI.—Section 1178(a) of the Social Se-*
12 *curity Act (42 U.S.C. 1320d-7(a)) is amended, in the*
13 *matter preceding paragraph (1), by inserting “Sub-*
14 *ject to section 4(b) of the Health Information Tech-*
15 *nology Promotion Act of 2006—” after “GENERAL*
16 *EFFECT.—”.*

17 **SEC. 5. IMPLEMENTING MODERN CODING SYSTEM; APPLI-**
18 **CATION UNDER PART A OF THE MEDICARE**
19 **PROGRAM.**

20 (a) *UPGRADING ASC X12 AND NCPDP STANDARDS.—*

21 (1) *IN GENERAL.—The Secretary of Health and*
22 *Human Services shall provide by notice published in*
23 *the Federal Register for the following replacements of*
24 *standards to apply, including for purposes of part A*
25 *of title XVIII of such Act:*



1 (A) *ACCREDITED STANDARDS COMMITTEE*
2 *X12 (ASC X12) STANDARD.—The replacement of*
3 *the Accredited Standards Committee X12 (ASC*
4 *X12) version 4010 adopted under section 1173(a)*
5 *of such Act (42 U.S.C. 1320d-2(a)) with the ASC*
6 *X12 version 5010, as reviewed by the National*
7 *Committee on Vital Health Statistics.*

8 (B) *NATIONAL COUNCIL FOR PRESCRIPTION*
9 *DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS*
10 *STANDARDS.—The replacement of the National*
11 *Council for Prescription Drug Programs*
12 *(NCPDP) Telecommunications Standards ver-*
13 *sion 5.1 adopted under section 1173(a) of such*
14 *Act (42 U.S.C. 1320d-2(a)) with whichever is the*
15 *latest version (as determined by the Secretary) of*
16 *the NCPDP Telecommunications Standards that*
17 *has been approved by such Council and reviewed*
18 *by the National Committee on Vital Health Sta-*
19 *tistics as of April 1, 2008.*

20 (2) *APPLICATION.—The replacements made by*
21 *paragraph (1) shall apply, for purposes of section*
22 *1175(b)(2) of the Social Security Act (42 U.S.C.*
23 *1320d-4(b)(2)), to transactions occurring on or after*
24 *April 1, 2009.*



1 (3) *NO JUDICIAL REVIEW.*—*The determination of*
2 *the latest version under paragraph (1)(B) shall not be*
3 *subject to judicial review.*

4 (b) *UPGRADING ICD CODES.*—

5 (1) *IN GENERAL.*—*The Secretary of Health and*
6 *Human Services shall provide by notice published in*
7 *the Federal Register for the replacement of the Inter-*
8 *national Classification of Diseases, 9th revision, Clin-*
9 *ical Modification (ICD–9–CM) under the regulation*
10 *promulgated under section 1173(c) of the Social Secu-*
11 *rity Act (42 U.S.C. 1320d-2(c)), including for pur-*
12 *poses of part A of title XVIII of such Act, with both*
13 *of the following:*

14 (A) *The International Classification of Dis-*
15 *eases, 10th revision, Clinical Modification (ICD–*
16 *10–CM).*

17 (B) *The International Classification of Dis-*
18 *eases, 10th revision, Procedure Coding System*
19 *(ICD–10–PCS).*

20 (2) *APPLICATION .*—*The replacement made by*
21 *paragraph (1) shall apply, for purposes of section*
22 *1175(b)(2) of the Social Security Act (42 U.S.C.*
23 *1320d-4(b)(2)), to services furnished on or after Octo-*
24 *ber 1, 2009.*



1 (3) *RULES OF CONSTRUCTION.*—*Nothing in*
2 *paragraph (1) shall be construed—*

3 (A) *as affecting the application of classi-*
4 *fication methodologies or codes, such as CPT or*
5 *HCPCS codes, other than under the Inter-*
6 *national Classification of Diseases (ICD); or*

7 (B) *as superseding the authority of the Sec-*
8 *retary of Health and Human Services to main-*
9 *tain and modify the coding set for ICD–10–CM*
10 *and ICD–10–PCS, including under the amend-*
11 *ments made by section 6.*

12 (c) *APPLICATION OF UPGRADED STANDARDS UNDER*
13 *PART A OF THE MEDICARE PROGRAM.*—*Section 1816 of the*
14 *Social Security Act (42 U.S.C. 1395h) is amended by in-*
15 *serting after subsection (a) the following new subsection:*

16 “(b) *With respect to—*

17 “(1) *transactions under this part occurring on*
18 *or after April 1, 2009, all providers of services shall*
19 *use ASC X12 version 5010 with respect to services*
20 *provided under this part in compliance with section*
21 *5(a) of the Health Information Technology Promotion*
22 *Act of 2006; and*

23 “(2) *services furnished on or after October 1,*
24 *2009—*

1 “(A) all providers of services shall use ICD–
2 10–CM codes with respect to services provided
3 under this part in compliance with section 5(b)
4 of such Act; and

5 “(B) hospitals shall use ICD–10–PCS codes
6 (as well as ICD–10–CM codes) with respect to
7 inpatient hospital services provided under this
8 part in compliance with such section.”.

9 **SEC. 6. PROCEDURES TO ENSURE TIMELY UPDATING OF**
10 **STANDARDS THAT ENABLE ELECTRONIC EX-**
11 **CHANGES.**

12 Section 1174(b) of the Social Security Act (42 U.S.C.
13 1320d-3(b)) is amended—

14 (1) in paragraph (1)—

15 (A) in the first sentence, by inserting “and
16 in accordance with paragraph (3)” before the pe-
17 riod; and

18 (B) by adding at the end the following new
19 sentence: “For purposes of this subsection and
20 section 1173(c)(2), the term ‘modification’ in-
21 cludes a new version or a version upgrade.”; and

22 (2) by adding at the end the following new para-
23 graph:

24 “(3) **EXPEDITED PROCEDURES FOR ADOPTION OF**
25 **ADDITIONS AND MODIFICATIONS TO STANDARDS.—**

1 “(A) *IN GENERAL.*—For purposes of para-
2 graph (1), the Secretary shall provide for an ex-
3 pedited upgrade program (in this paragraph re-
4 ferred to as the ‘upgrade program’), in accord-
5 ance with this paragraph, to develop and ap-
6 prove additions and modifications to the stand-
7 ards adopted under section 1173(a) to improve
8 the quality of such standards or to extend the
9 functionality of such standards to meet evolving
10 requirements in health care.

11 “(B) *PUBLICATION OF NOTICES.*—Under the
12 upgrade program:

13 “(i) *VOLUNTARY NOTICE OF INITIATION*
14 *OF PROCESS.*—Not later than 30 days after
15 the date the Secretary receives a notice from
16 a standard setting organization that the or-
17 ganization is initiating a process to develop
18 an addition or modification to a standard
19 adopted under section 1173, the Secretary
20 shall publish a notice in the *Federal Reg-*
21 ~~ister~~ that—

22 “(I) identifies the subject matter
23 of the addition or modification;



1 “(II) provides a description of
2 how persons may participate in the de-
3 velopment process; and

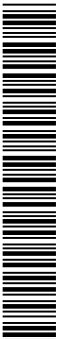
4 “(III) invites public participation
5 in such process.

6 “(ii) VOLUNTARY NOTICE OF PRELIMI-
7 NARY DRAFT OF ADDITIONS OR MODIFICA-
8 TIONS TO STANDARDS.—Not later than 30
9 days after the date the Secretary receives a
10 notice from a standard setting organization
11 that the organization has prepared a pre-
12 liminary draft of an addition or modifica-
13 tion to a standard adopted by section 1173,
14 the Secretary shall publish a notice in the
15 Federal Register that—

16 “(I) identifies the subject matter
17 of (and summarizes) the draft;

18 “(II) specifies the procedure for
19 obtaining documentation for the draft;

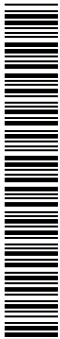
20 “(III) provides a description of
21 how persons may submit comments in
22 writing and at any public hearing or
23 meeting held by the organization on
24 the draft; and



1 “(IV) invites submission of such
2 comments and participation in such
3 hearing or meeting.

4 “(iii) NOTICE OF PROPOSED ADDITION
5 OR MODIFICATION TO STANDARDS.—Not
6 later than 30 days after the date the Sec-
7 retary receives a notice from a standard set-
8 ting organization that the organization has
9 a proposed addition or modification to a
10 standard adopted under section 1173 that
11 the organization intends to submit under
12 subparagraph (D)(iii), the Secretary shall
13 publish a notice in the Federal Register that
14 contains, with respect to the proposed addi-
15 tion or modification, the information re-
16 quired in the notice under clause (ii) with
17 respect to a preliminary draft of an addi-
18 tion or modification.

19 “(iv) CONSTRUCTION.—Nothing in this
20 paragraph shall be construed as requiring a
21 standard setting organization to request the
22 notices described in clauses (i) and (ii) with
23 respect to an addition or modification to a
24 standard in order to qualify for an expe-
25 dited determination under subparagraph



1 (C) with respect to a proposal submitted to
2 the Secretary for adoption of such addition
3 or modification.

4 “(C) *PROVISION OF EXPEDITED DETER-*
5 *MINATION.*—Under the upgrade program and
6 with respect to a proposal by a standard setting
7 organization for an addition or modification to
8 a standard adopted under section 1173, if the
9 Secretary determines that the standard setting
10 organization developed such addition or modi-
11 fication in accordance with the requirements of
12 subparagraph (D) and the National Committee
13 on Vital and Health Statistics recommends ap-
14 proval of such addition or modification under
15 subparagraph (E), the Secretary shall provide
16 for expedited treatment of such proposal in ac-
17 cordance with subparagraph (F).

18 “(D) *REQUIREMENTS.*—The requirements
19 under this subparagraph with respect to a pro-
20 posed addition or modification to a standard by
21 a standard setting organization are the fol-
22 lowing:

23 “(i) *REQUEST FOR PUBLICATION OF*
24 *NOTICE.*—The standard setting organization
25 submits to the Secretary a request for publi-



1 *cation in the Federal Register of a notice*
2 *described in subparagraph (B)(iii) for the*
3 *proposed addition or modification.*

4 *“(ii) PROCESS FOR RECEIPT AND CON-*
5 *SIDERATION OF PUBLIC COMMENT.—The*
6 *standard setting organization provides for a*
7 *process through which, after the publication*
8 *of the notice referred to under clause (i), the*
9 *organization—*

10 *“(I) receives and responds to pub-*
11 *lic comments submitted on a timely*
12 *basis on the proposed addition or*
13 *modification before submitting such*
14 *proposed addition or modification to*
15 *the National Committee on Vital and*
16 *Health Statistics under clause (iii);*
17 *and*

18 *“(II) makes publicly available a*
19 *written explanation for its response in*
20 *the proposed addition or modification*
21 *to comments submitted on a timely*
22 *basis.*

23 *“(iii) SUBMITTAL OF FINAL PROPOSED*
24 *ADDITION OR MODIFICATION TO NCVHS.—*
25 *After completion of the process under clause*



1 (ii), the standard setting organization sub-
2 mits the proposed addition or modification
3 to the National Committee on Vital and
4 Health Statistics for review and consider-
5 ation under subparagraph (E). Such sub-
6 mission shall include information on the or-
7 ganization's compliance with the notice and
8 comment requirements (and responses to
9 those comments) under clause (ii).

10 “(E) HEARING AND RECOMMENDATIONS BY
11 NATIONAL COMMITTEE ON VITAL AND HEALTH
12 STATISTICS.—Under the upgrade program, upon
13 receipt of a proposal submitted by a standard
14 setting organization under subparagraph
15 (D)(iii) for the adoption of an addition or modi-
16 fication to a standard, the National Committee
17 on Vital and Health Statistics shall provide no-
18 tice to the public and a reasonable opportunity
19 for public testimony at a hearing on such addi-
20 tion or modification. The Secretary may partici-
21 pate in such hearing in such capacity (including
22 presiding *ex officio*) as the Secretary shall deter-
23 mine appropriate. Not later than 120 days after
24 the date of receipt of the proposal, the Committee
25 shall submit to the Secretary its recommendation

1 to adopt (or not adopt) the proposed addition or
2 modification.

3 “(F) DETERMINATION BY SECRETARY TO
4 ACCEPT OR REJECT NATIONAL COMMITTEE ON
5 VITAL AND HEALTH STATISTICS RECOMMENDA-
6 TION.—

7 “(i) TIMELY DETERMINATION.—Under
8 the upgrade program, if the National Com-
9 mittee on Vital and Health Statistics sub-
10 mits to the Secretary a recommendation
11 under subparagraph (E) to adopt a pro-
12 posed addition or modification, not later
13 than 90 days after the date of receipt of
14 such recommendation the Secretary shall
15 make a determination to accept or reject the
16 recommendation and shall publish notice of
17 such determination in the Federal Register
18 not later than 30 days after the date of the
19 determination.

20 “(ii) CONTENTS OF NOTICE.—If the de-
21 termination is to reject the recommendation,
22 such notice shall include the reasons for the
23 rejection. If the determination is to accept
24 the recommendation, as part of such notice
25 the Secretary shall promulgate the modified



1 *standard (including the accepted proposed*
2 *addition or modification accepted) as a*
3 *final rule under this subsection without any*
4 *further notice or public comment period.*

5 “(iii) *LIMITATION ON CONSIDER-*
6 *ATION.—The Secretary shall not consider a*
7 *proposal under this subparagraph unless the*
8 *Secretary determines that the requirements*
9 *of subparagraph (D) (including publication*
10 *of notice and opportunity for public com-*
11 *ment) have been met with respect to the*
12 *proposal.*

13 “(G) *TREATMENT AS SATISFYING REQUIRE-*
14 *MENTS FOR NOTICE-AND-COMMENT.—Any re-*
15 *quirements under section 553 of title 5, United*
16 *States Code, relating to notice and an oppor-*
17 *tunity for public comment with respect to a final*
18 *rule promulgated under subparagraph (F) shall*
19 *be treated as having been met by meeting the re-*
20 *quirements of the notice and opportunity for*
21 *public comment provided under provisions of*
22 *subparagraphs (B)(iii), (D), and (E).*

23 “(H) *NO JUDICIAL REVIEW.—A final rule*
24 *promulgated under subparagraph (F) shall not*
25 *be subject to judicial review.”.*

1 **SEC. 7. REPORT ON THE AMERICAN HEALTH INFORMATION**
2 **COMMUNITY.**

3 *Not later than one year after the date of the enactment*
4 *of this Act, the Secretary of Health and Human Services*
5 *shall submit to Congress a report on the work conducted*
6 *by the American Health Information Community (in this*
7 *section referred to as “AHIC”), as established by the Sec-*
8 *retary. Such report shall include the following:*

9 (1) *A description of the accomplishments of*
10 *AHIC, with respect to the promotion of the develop-*
11 *ment of a nationwide health information network and*
12 *the increased adoption of health information tech-*
13 *nology.*

14 (2) *Information identifying the practices that*
15 *are used to protect health information and to guar-*
16 *antee confidentiality and security of such informa-*
17 *tion.*

18 (3) *Information on the progress in—*

19 (A) *establishing uniform industry-wide*
20 *health information technology standards;*

21 (B) *achieving an internet-based nationwide*
22 *health information network;*

23 (C) *achieving interoperable electronic health*
24 *record adoption across health care providers; and*

25 (D) *making available technological and*
26 *other innovations to ensure the security and con-*

1 *fidentiality of health information in the pro-*
2 *motion of health information technology.*

3 *(4) Recommendations for the transition of the*
4 *AHIC to a permanent entity, including—*

5 *(A) a schedule for such transition;*

6 *(B) options for structuring the entity as ei-*
7 *ther a public-private or private sector entity;*

8 *(C) the collaborative role of the Federal*
9 *Government in the entity; and*

10 *(D) the ongoing responsibilities of the enti-*
11 *ty, such as providing the leadership and plan-*
12 *ning in establishing standards, certifying health*
13 *information technology, and providing long-term*
14 *governance for health care transformation*
15 *through technology.*

16 **SEC. 8. STRATEGIC PLAN FOR COORDINATING IMPLEMEN-**
17 **TATION OF HEALTH INFORMATION TECH-**
18 **NOLOGY.**

19 *(a) IN GENERAL.—Not later than 180 days after the*
20 *date of the enactment of this Act, the Secretary of Health*
21 *and Human Services, in consultation with public and pri-*
22 *vate entities involved in the area of health information tech-*
23 *nology, shall develop a strategic plan related to the need*
24 *for coordination in such area.*



1 (b) *COORDINATION OF SPECIFIC IMPLEMENTATION*
2 *PROCESSES.*—*The strategic plan under subsection (a) shall*
3 *address the need for coordination in the implementation of*
4 *the following:*

5 (1) *HEALTH INFORMATION TECHNOLOGY STAND-*
6 *ARDS.*—*Health information technology standards ap-*
7 *proved under section 271(c)(3)(B)(i) of the Public*
8 *Health Service Act, as added by section 2.*

9 (2) *HIPAA TRANSACTION STANDARDS.*—*Trans-*
10 *action standards under section 1173(a) of the Social*
11 *Security Act (42 U.S.C. 1320d-2(d)).*

12 (3) *UPDATED ICD CODES.*—*The International*
13 *Statistical Classification of Diseases and Related*
14 *Health Problems, 10th revision, Clinical Modification*
15 *(ICD–10–CM) and the International Statistical Clas-*
16 *sification of Diseases and Related Health Problems,*
17 *10th revision, Procedure Coding System (ICD–10–*
18 *PCS) described in section 5.*

19 (c) *COORDINATION AMONG SPECIFIC FEDERAL ENTI-*
20 *TIES.*—*The strategic plan under subsection (a) shall ad-*
21 *dress any methods to coordinate, with respect to the elec-*
22 *tronic exchange of health information, actions taken by the*
23 *following entities:*

24 (1) *The Office of the National Coordinator for*
25 *Health Information Technology.*



1 (2) *The American Health Information Commu-*
2 *nity.*

3 (3) *The Office of Electronic Standards and Secu-*
4 *rity of the Centers for Medicare and Medicaid Serv-*
5 *ices.*

6 (4) *The National Committee on Vital Health*
7 *Statistics.*

8 (5) *Any other entity involved in the electronic*
9 *exchange of health information that the Secretary de-*
10 *termines appropriate.*

11 **SEC. 9. PROMOTION OF TELEHEALTH SERVICES.**

12 (a) *FACILITATING THE PROVISION OF TELEHEALTH*
13 *SERVICES ACROSS STATE LINES.—*

14 (1) *IN GENERAL.—The Secretary of Health and*
15 *Human Services shall, in coordination with rep-*
16 *resentatives of States, physicians, health care practi-*
17 *tioners, and patient advocates, encourage and facili-*
18 *tate the adoption of State reciprocity agreements for*
19 *practitioner licensure in order to expedite the provi-*
20 *sion across State lines of telehealth services.*

21 (2) *REPORT.—Not later than 18 months after the*
22 *date of the enactment of this Act, the Secretary shall*
23 *submit to Congress a report on the actions taken to*
24 *carry out paragraph (1).*

1 (3) *STATE DEFINED.*—*In this subsection, the*
2 *term “State” has the meaning given that term for*
3 *purposes of title XVIII of the Social Security Act.*

4 (b) *USE OF STORE AND FORWARD TECHNOLOGY.*—

5 (1) *STUDY.*—*The Secretary of Health and*
6 *Human Services, acting through the Director of the*
7 *Office for the Advancement of Telehealth, shall con-*
8 *duct a study on the use of store and forward tech-*
9 *nologies (that provide for the asynchronous trans-*
10 *mission of health care information in single or multi-*
11 *media formats) in the provision of telehealth services*
12 *for which payment may be made under the Medicare*
13 *program. Such study shall include an assessment of*
14 *the feasibility, advisability, and the costs of expand-*
15 *ing the use of such technologies for use in the diag-*
16 *nosis and treatment of certain conditions.*

17 (2) *REPORT.*—*Not later than 18 months after the*
18 *date of the enactment of this Act, the Secretary shall*
19 *submit to Congress a report on the study conducted*
20 *under paragraph (1) and shall include in such report*
21 *such recommendations for legislation or administra-*
22 *tion action as the Secretary determines appropriate.*

23 (c) *EXPANSION OF TELEHEALTH SERVICES.*—

24 (1) *STUDY.*—*The Secretary of Health and*
25 *Human Services, in coordination with the Office for*



1 *the Advancement of Telehealth, the Agency for*
2 *Healthcare Research and Quality, and the Centers for*
3 *Medicare and Medicaid Services, shall conduct a*
4 *study to determine the feasibility, advisability, and*
5 *the costs of—*

6 *(A) including coverage and payment for*
7 *home health-related telehealth services as part of*
8 *home health services under title XVIII of the So-*
9 *cial Security Act; and*

10 *(B) expanding the list of sites described in*
11 *paragraph (4)(C)(ii) of section 1834(m) of the*
12 *Social Security Act (42 U.S.C. 1395m(m)) to in-*
13 *clude county mental health clinics or other pub-*
14 *licly funded mental health facilities for the pur-*
15 *pose of payment under such section for the provi-*
16 *sion of telehealth services at such clinics or fa-*
17 *cilities.*

18 *(2) SPECIFICS OF STUDY.—Such study shall*
19 *demonstrate whether the changes described in sub-*
20 *paragraphs (A) and (B) of paragraph (1) will result*
21 *in the following:*

22 *(A) Enhanced health outcomes for individ-*
23 *uals with one or more chronic conditions.*

24 *(B) Health outcomes for individuals fur-*
25 *nished telehealth services or home health-related*



1 *telehealth services that are at least comparable to*
2 *the health outcomes for individuals furnished*
3 *similar items and services by a health care pro-*
4 *vider at the same location of the individual or*
5 *at the home of the individual, respectively.*

6 *(C) Facilitation of communication of more*
7 *accurate clinical information between health care*
8 *providers.*

9 *(D) Closer monitoring of individuals by*
10 *health care providers.*

11 *(E) Overall reduction in expenditures for*
12 *health care items and services.*

13 *(F) Improved access to health care.*

14 (3) *HOME HEALTH-RELATED TELEHEALTH*
15 *SERVICES DEFINED.—For purposes of this subsection,*
16 *the term “home health-related telehealth services”*
17 *means technology-based professional consultations,*
18 *patient monitoring, patient training services, clinical*
19 *observation, patient assessment, and any other health*
20 *services that utilize telecommunications technologies.*
21 *Such term does not include a telecommunication that*
22 *consists solely of a telephone audio conversation, fac-*
23 *simile, electronic text mail, or consultation between*
24 *two health care providers.*



1 (4) *REPORT*.—Not later than 18 months after the
2 date of the enactment of this Act, the Secretary shall
3 submit to Congress a report on the study conducted
4 under subparagraph (1) and shall include in such re-
5 port such recommendations for legislation or adminis-
6 tration action as the Secretary determines appro-
7 priate.



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June 19, 2006 (4:31 PM)

109TH CONGRESS
2^D SESSION

H. R. 4157

[Report No. 109-]

A BILL

To amend the Social Security Act to encourage the dissemination, security, confidentiality, and usefulness of health information technology.
